



MEMORANDUM

To: PLANNING COMMISSION

Date: October 10, 2006

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: ZONING AMENDMENT APPLICATION, ZAA-05-11: CITY OF MORGAN HILL-DOWNTOWN ZONING AMENDMENTS.

REQUEST

A request for amendment(s) to Title 18 of the Morgan Hill Municipal Code: Adding Chapter 18.23 (Downtown Ground Floor Overlay District) to implement the Morgan Hill Downtown Plan recommendation of encouraging retail, restaurant, entertainment and related uses and rezoning certain properties generally located on Monterey Road between Main Avenue and 5th Street and on 3rd Street between Monterey Road and Depot Street; Amending Chapter 18.24 (CC-R - Central Commercial/Residential District) by reorganizing allowable use categories into Permitted Uses and Conditional Uses and modifying commercial use performance standards; and, Amending Chapter 18.54 (Conditional and Temporary Use Permits) by modifying findings required for approval of a Downtown Administrative Use Permit (DAUP), establishing a three year time limit, and a process for extensions.

RECOMMENDATION

Environmental Assessment:

A Mitigated Negative Declaration was adopted in conjunction with the Downtown Plan, which addressed actions necessary to implement the Plan.

Application ZAA 05-11:

Recommend City Council approval of the proposed Downtown Ground Floor (GF) Overlay District zoning text as shown in Exhibit "A", rezoning of parcels to include the GF district as shown in Exhibit "B", zoning text amendments to Chapter 18.24 (CC-R – Central Commercial – Residential) as shown in Exhibit "C", and zoning text amendments to Chapter 18.54 (Conditional and Temporary Uses) as shown in Exhibit "D" of the attached resolution.

Processing Deadline:

N/A – The Permit Streamlining Act does not apply to legislative acts.

BACKGROUND

On September 12th, the Planning Commission reviewed a group of zoning ordinance amendments affecting the downtown which:

- Focused the “ground floor retail restricted area” to between Main and Dunne;
- Excluded certain buildings that were designed for office use;
- Allowed DAUP’s when the retail vacancy rate exceeds five-percent; and,
- Imposed a time limit on DAUP’s to three years.

The amendments were referred by the City Council at the request of the Morgan Hill Downtown Association (MHDA). The Planning Commission had a number of comments and requested revisions, many of which had to do with other aspects of the ordinances that were being amended. Since many of the follow-up revisions differed from the above list, it was requested MHDA provide input on these additional changes. Staff attended the September 26th MHDA meeting to discuss the Planning Commission’s comments and received feedback as more fully discussed below.

CASE ANALYSIS

As the Planning Commission will recall, the proposed amendments involve three sections of the Zoning Ordinance:

- The CC-R (Central Commercial-Residential) District (Chapter 18.24)
- A new GF (Downtown Ground Floor) Overlay District (Chapter 18.23); and,
- The DAUP section (Chapter 18.54)

The following summarizes the changes that were made since the last Planning Commission meeting, including input received from the MHDA:

Downtown Administrative Use Permit Chapter

Expiration – Extensions (Section 18.54.280). As previously written, an applicant could obtain a DAUP, which would be in effect for three years, and apply for an extension the following day, effectively resulting in a six year permit. At the last meeting, the Planning Commission discussed a revision that would require extension requests to be submitted no sooner than six to 12 months before the DAUP expires. The MHDA has recommended that extension submittal requests occur no sooner than nine months prior to expiration of the DAUP. The ordinance has been revised accordingly.

CC-R/GF Districts

Schools. Schools were a permitted use prior to the 2004 amendments to the CC-R District that were adopted to implement the 2003 Downtown Plan. Accordingly, the reformatted CC-R ordinance reviewed by the Planning Commission last month listed schools as a permitted use. Concern was expressed that these types of uses act as a deterrent for certain other desirable uses such as restaurants and nightclubs to locate in the downtown because of the difficulty involved with obtaining a license from the Department of Alcoholic and Beverage Control (ABC). MHDA board members, on the other hand, commented that certain types of schools such as trade schools and tutoring businesses could bring more people into downtown that could patronize other businesses. Since the previous Planning Commission meeting, staff has had a conversation with an ABC representative who confirmed that the primary concern is the proximity of high schools and colleges to bars and nightclubs when considering the issuance of licenses. To address comments from both the Planning Commission and MHDA, Staff is proposing to distinguish between the various types of schools and is proposing two new definitions:

- Schools, General Educational
- Schools, Business Trade or Tutoring

The next item on the Planning Commission agenda involves amendments to the definitions chapter of the Zoning Ordinance and includes both of these definitions. The revised CC-R ordinance lists “Schools, business, trade, or tutoring” as a permitted use and “Schools, General Educational” as a conditional use.

Bars and Nightclubs. At the previous meeting, staff alerted the Planning Commission to a discrepancy which listed bars and nightclubs as a permitted use in the GF District and a conditionally permitted use in the CC-R District. The possibility exists that one of these uses could occupy a building which extends beyond the GF overlay District (75 feet from the Monterey Road or Third Street) with a portion of the use being permitted and the other portion conditionally permitted. At the MHDA meeting, staff discussed the need for consistency between the two districts. MHDA board members were of the opinion that the size and scale of bars and nightclubs and their potential parking impacts needed to be reviewed through the Conditional Use Permit process. The MHDA recommended that stand alone bars and nightclubs be conditionally permitted in both districts, while bars and nightclubs ancillary to a restaurant use be permitted. The language has been revised accordingly.

Personal Service Uses. Because of the mixed messages included in the Downtown Plan with respect to personal services uses, staff was proposing to allow them in the GF Overlay District with a DAUP as long as they included a retail component with a window display. One commissioner expressed concern that this could be abused by applicants, citing an example of a barbershop selling only combs. MHDA board members were of the opinion that personal service uses ancillary to retail uses could be allowed in the GF Overlay District with a DAUP, while stand alone personal services uses should be subject to Conditional Use Permit requirements. The GF Overlay District and DAUP Chapter have been modified accordingly.

Additional Uses. At the previous Planning Commission meeting, it was recommended that staff examine the possibility of adding new uses in both the CC-R and GF Districts that are supportive of persons living and working downtown. Bakeries and markets were cited as examples of such uses. Bakeries are currently included in the restaurant definition and are therefore already permitted uses. Staff has added the following permitted uses in the CC-R and GF Districts:

- Specialty Food Market
- Antique Shops, Vintage Clothing and Collectibles

As is the case with schools, these definitions are included in the group of amendments associated with the following agenda item.

Performance Standards. The performance standards included in Section 18.24.110 of the CC-R District pre-date the Downtown Plan and were intended to promote compatibility between adjacent commercial and residential uses. Some of the standards relate to uses (i.e. noise) while others relate to physical development (i.e. transitioning development, landscaping and setbacks). Staff is proposing to modify this section by:

- Eliminating the prohibition of commercial uses adjacent to residential uses which have a trip generation figure of more than ten trips per 100 sq. ft. of floor area.
- Eliminating the requirement for commercial use conversions to receive site and architectural plan approval by the Architectural Review Board (ARB). It should be noted that if exterior improvements are proposed as part of the commercial use conversion, ARB review may be required depending on the level of improvements.
- Modifying the noise standards to clarify that evening hours are defined as 10:00 p.m.
- Grouping the physical development standards into one sub-section and clarifying that they **may** (rather than shall) be required by the ARB through review of a Site Review permit for a new commercial building expansion or new commercial building.

The revised ordinances are attached with changes made since the previous meeting **highlighted**.

RECOMMENDATION

The proposed amendments are consistent with both the Downtown Plan, as well as previous direction given by the City Council. Input from the Downtown Association has been incorporated into the proposed zoning amendments. Staff is therefore recommending that the Planning Commission recommend City Council approval of the zoning amendments.

Attachments:

Resolution

- Exhibit "A" – Chapter 18.23 - GF Downtown Ground Floor Overlay District
- Exhibit "B" – Proposed GF Overlay District Map
- Exhibit "C" - Chapter 18.24 – CC-R (Central Commercial/Residential) District
- Exhibit "D" – Chapter 18.54 – Downtown Administrative Use Permits

RESOLUTION NO. 06-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF TEXT AMENDMENTS ADDING SECTION 18.23 (GF – DOWNTOWN GROUND FLOOR OVERLAY) ZONING DISTRICT TO CHAPTER 18 OF THE MORGAN HILL MUNICIPAL CODE; REZONING CERTAIN PROPERTIES GENERALLY LOCATED ON MONTEREY ROAD BETWEEN MAIN AVENUE AND 5TH STREET AND ON 3RD STREET BETWEEN MONTEREY ROAD AND DEPOT STREET (APN'S 726-14-001 THROUGH -008, -010 THROUGH -014, -027 THROUGH -030, -036, AND -048 THROUGH -050; 767-07-010 THROUGH -011, -029 THROUGH -031, -047 THROUGH -050, -057, -058, -064, AND -066; 726-08-004, -006, -044 AND -045; 726-13-017 THROUGH -021, AND -037 THROUGH -044) TO INCLUDE THE GF OVERLAY DISTRICT; AMENDING CHAPTER 18.24 (CC-R CENTRAL COMMERCIAL/RESIDENTIAL DISTRICT) BY REORGANIZING ALLOWABLE USE CATEGORIES INTO PERMITTED USES AND CONDITIONAL USES AND MODIFYING COMMERCIAL USE PERFORMANCE STANDARDS; AND, AMENDING CHAPTER 18.54 (CONDITIONAL AND TEMPORARY USE PERMITS) BY MODIFYING FINDINGS REQUIRED FOR APPROVAL OF A DOWNTOWN ADMINISTRATIVE USE PERMIT, ESTABLISHING A THREE YEAR TIME LIMIT, AND A PROCESS FOR EXTENSIONS.

WHEREAS, such request was considered by the Planning Commission at its regular meetings of September 12, 2006 and October 10, 2006, at which time the Planning Commission recommended approval of application ZAA-05-11: City of Morgan Hill – Downtown Zoning Amendments; and

WHEREAS, a Downtown Plan has been prepared by the City of Morgan Hill;

WHEREAS, one of the policies of the 2003 Downtown Plan is to encourage retail, restaurant, entertainment and service commercial businesses on portions of Monterey Road and Third Street shown on Figure 7 of the Downtown Plan in an effort to enhance the pedestrian character of downtown (“ground floor use restriction policy”); and

WHEREAS, while the Planning Commission of the City of Morgan Hill does wish to encourage retail, entertainment, and service commercial uses within the ground floor of structures located in this defined area of the Downtown, the Planning Commission also recognizes that certain buildings may not be appropriate for these types of uses in terms of design and that the market may not be sufficiently strong to allow for all ground floor space to be put to these uses, and having vacant ground floor space is not beneficial for the Downtown area;

and

WHEREAS, the insertion of Chapter 18.23, GF – Downtown Ground Floor Overlay District to the Morgan Hill Municipal Code, and the rezoning of a portion of properties to include the GF District will implement the ground floor use restriction policy for appropriately designed buildings; and

WHEREAS, the zoning text amendments to the Chapter 18.24 (CC-R – Central Commercial/Residential), when considered in conjunction with the proposed GF Overlay District, will provide a consistent format with other zoning districts of Chapter 18 of the Municipal Code; and

WHEREAS, the zoning text amendments to Chapter 18.54 (Conditional and Temporary Uses) that modify the findings required for issuance of a Downtown Administrative Use Permit (DAUP) will ensure that there will not be an abundance of vacant space Downtown; and

WHEREAS, the zoning text amendments to Chapter 18.54 (Conditional and Temporary Uses) that establish a three year time limit on DAUP's (with provisions for extensions) will allow the City an opportunity to revisit certain uses at a later date to determine whether the circumstances upon which a DAUP was approved have changed; and

WHEREAS, a Mitigated Negative Declaration has been adopted and filed for a defined level of future residential, mixed use and non-residential development in the Downtown area in conjunction with the Downtown Plan and the proposed zoning text amendments and rezoning do not change these defined levels of development and no further review is required for compliance with the California Environmental Quality Act; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed zoning amendments and rezonings are consistent with the Zoning Ordinance, the General Plan, and the Downtown Plan.

SECTION 2. The proposed zoning amendments and rezonings are required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. The Planning Commission hereby recommends the adoption of Chapter 18.23, GF – Downtown Ground Floor Overlay District into the Morgan Hill Municipal Code as shown in Exhibit "A", reclassification of a portion of properties as shown in Exhibit "B", text amendments to the Chapter 18.24 (CC-R – Central Commercial/Residential) as shown in Exhibit "C", and text amendments to Chapter 18.54 (Conditional and Temporary Uses) as shown in Exhibit "D".

PASSED AND ADOPTED THIS 10th DAY OF OCTOBER, 2006, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair

EXHIBIT "A"

Chapter 18.23

GF DOWNTOWN GROUND FLOOR OVERLAY DISTRICT

Sections:

- 18.23.010 Purpose of district - Applicability.
- 18.23.020 Permitted uses.
- 18.23.030 Conditional uses.

18.23.010 Purpose of district - Applicability.

A. To implement the Morgan Hill Downtown Plan, the Downtown Ground Floor Overlay District is intended to modify the uses allowed in the CC-R district to allow retail, restaurant and entertainment uses on the ground floor that support a continuity of display window visual interest. For the purposes of this chapter, "ground floor" means the first floor which is above grade. Where the Downtown Ground Floor Overlay District is combined with the CC-R District, the uses established by this chapter shall apply in lieu of the uses normally allowed in the CC-R District. Except for the regulations relating to uses set forth in this chapter, all other regulations shall be those of the applicable underlying CC-R District.

B. This district shall apply to parcels that have frontage along portions of Monterey and Third Street(s) as shown on the Zoning Map of the City of Morgan Hill, as may be amended from time to time. The district shall include all portions of the property within 75 feet of the property line fronting Monterey or Third Street(s).

18.23.020 Permitted uses.

The following uses shall be permitted in the GF Overlay District:

- A. Retail Stores;
- B. Restaurants;
- C. Financial Services;
- D. Nightclubs, and bars ancillary to a restaurant use;
- E. Theaters;
- F. Commercial Service;
- G. Art and Craft Gallery;
- H. Antique Shops, Vintage Clothing and Collectibles
- I. Specialty Food Market

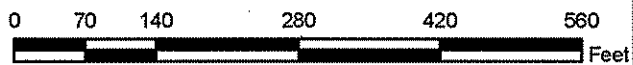
18.23.030 Conditional uses.

(1) The following uses may be conditionally permitted in the GF Overlay District, subject to issuance of a **Downtown Administrative Use Permit** in accordance with Article IV of Chapter 18.54 of this title and finding of consistency with the Downtown Plan:

- A. Commercial, Professional Administrative and Medical Office uses;
- B. Personal Service uses ancillary to a retail use.

(2) The following uses may be conditionally permitted in the GF Overlay District, subject to issuance of a **Conditional Use Permit** in accordance with Article I of Chapter 18.54 of this title and finding of consistency with the Downtown Plan:

- A. Convenience Markets/Stores;
- B. Commercial Indoor Recreation;
- C. Drycleaner;
- D. Personal Services;
- E. Nightclubs and Bars;
- F. Any other use that the Planning Commission finds to be of similar nature to the permitted uses and conditional uses specified in this chapter for the GF Overlay District.



 GF Overlay

EXHIBIT "B"
ZAA05-11: City of Morgan Hill -
Downtown Zoning Amendments



EXHIBIT "C"

Chapter 18.24

CC-R CENTRAL COMMERCIAL/RESIDENTIAL DISTRICT

Sections:

- 18.24.010 Purpose of district.
- 18.24.020 *Downtown Ground Floor (GF) Overlay District.***
- ~~18.24.020 Permitted uses for first floor locations for parcels fronting on Monterey Road or Third Street.~~
- ~~18.24.030 Conditional uses for first floor locations on parcels fronting on Monterey Road or Third St.~~
- ~~18.24.040 Permitted uses for second story or above locations for parcels fronting on Monterey Road or Third Street.~~
- ~~18.24.050 Conditional uses for second story or above location for parcels fronting on Monterey Road or Third Street.~~
- 18.24.060 Permitted uses for parcels not fronting on Monterey Road or Third Street.
- 18.24.070 Conditional uses for all areas not fronting on Monterey Road or Third Street.
- 18.24.080 Residential Development restrictions within the CC-R district.
- 18.24.090 Accessory uses.
- 18.24.100 Site development standards.
- 18.24.110 Commercial uses--Performance standards.
- 18.24.120 Other required conditions.
(Ord. No. 1692 N.S. § 3, 2004)

18.24.010 Purpose of district.

The purposes of this CC-R central commercial/residential mixed-use district are to:

- A. Implement the goals and objectives of the Downtown Design Plan as recommended by the City Council in 2003 and as amended from time to time.
- B. Preserve older architectural styles in the city;
- C. Provide for a variety and intermixture of residential and commercial activities in the downtown area; and
- D. Conserve housing stock. (Ord. 1692 N.S. § 18, 2004; Ord. 559 N.S. § A (part), 1981)

18.24.020 *Downtown Ground Floor (GF) Overlay District.*

The ground floor combining district of Chapter 18.23 shall apply to the area of the CC-R district designated "GF" Overlay District as shown on the Zoning Map. Where the Downtown Ground Floor Overlay District is combined with the CC-R District, the uses established by the GF Overlay District shall apply in lieu of the uses normally allowed in the CC-R District. Except for the regulations relating to uses set forth in the GF

District, all other regulations shall be those of the applicable underlying CC-R District.

18.24.020 — Permitted uses for first floor locations for parcels fronting on Monterey Road or Third Street.

The following uses shall be permitted in the CC-R district for first floor locations for parcels fronting on Monterey Rd. or Third St.:

- A. — Retail Stores;
- B. — Restaurants;
- C. — Financial Services;
- D. — Nightclubs, theaters and bars;
- E. — Commercial indoor recreation uses 3,000 sq. ft. or less in area.
- F. — Schools located between E. Dunne Ave. and E. Fifth St. (Ord. No. 1692 N.S. § 3, 2004)

18.24.030 — Conditional uses for first floor locations on parcels fronting on Monterey Road or Third Street.

— The following uses may be conditionally allowed in the CC-R district on first floor locations on parcels fronting on Monterey Rd. or Third St., subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan:

- A. — Residential units;
- B. — Convenience Markets/Stores;
- C. — Drive-in Establishments;
- D. — Commercial Indoor Recreation. (Ord. 1744 N.S. § 1, 2005; Ord. No. 1692 N.S. § 3, 2004)

The following uses may be allowed in the CC-R district on first floor locations on parcels fronting on Monterey Rd. or Third St., subject to issuance of a Downtown Administrative Use Permit in accordance with Article IV of Chapter 18.54 of this title:

- A. — Commercial, Professional and Medical Office uses;
- B. — Personal Services. (Ord. 1744 N.S. § 1, 2005)

18.24.040 — Permitted uses for second story or above locations for parcels fronting on Monterey Road or Third Street.

— The following uses in the CC-R district shall be permitted only in second story (or above) locations for parcels fronting on Monterey Rd. or Third St.:

- A. — Single family attached, duplex and multi family dwellings (see development restriction in section 18.24.070);
- B. — Personal Services;
- C. — Professional Offices;
- D. — Medical Offices
- E. — Small Family Day Care.

F. ~~All permitted uses listed in Section 18.24.020. (Ord. No. 1692 N.S. § 3, 2004)~~

18.24.050 ~~Conditional uses for second story or above location for parcels fronting on Monterey Road or Third Street.~~

~~The following uses in the CC-R district shall be conditional in second story (or above) locations for parcels fronting on Monterey Rd. or Third St. subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan:~~

- ~~A. Schools~~
- ~~B. Convenience Markets/Stores;~~
- ~~C. Commercial Indoor Recreation. (Ord. No. 1692 N.S. § 3, 2004 Ord. 1495 N.S. § 12, 2001)~~

18.24.060 Permitted uses for parcels not fronting on Monterey Road or Third Street.

The following uses shall be permitted in the CC-R district for parcels not fronting on Monterey Rd. or Third St.:

- A. Single-family attached, detached, duplex and multifamily dwellings (see development restriction in section 18.24.080);
- B. Retail (excepting locations on First, Second, Third and Fourth Street(s) west of the parcels fronting the west side on of Monterey Rd.);
- C. Restaurants;
- D. Personal Services;
- E. Medical Offices;
- F. Professional Offices;
- G. Financial Services;
- H. Small Family Day Care. (Ord. No. 1692 N.S. § 3, 2004; Ord. 1495 N.S. § 13, 2001)
- I. *Commercial recreation uses 3,000 sq. ft. or less;*
- J. *Business Support Services;*
- K. *Office, Administrative;*
- L. *Arts and Crafts Gallery;*
- M. *Food Service, Takeout;*
- N. *Specialty Food Market;*
- O. *Nightclubs and Bars ancillary to a restaurant located within the GF Overlay District whose ground floor tenant space extends beyond 75 feet from Monterey Road or Third Street;*
- P. *Antique Shops, Vintage Clothing and Collectibles;*
- Q. *Commercial Service;*
- R. *Business, Trade or Tutoring Schools*
- S. *Theaters located within the GF Overlay District whose ground floor tenant space extends beyond 75 feet from Monterey or Third Street.*

18.24.070 Conditional uses for all areas not fronting on Monterey Road or Third Street.

The following uses may be conditionally allowed ~~in all areas not fronting on Monterey Rd. or Third St.~~, subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan, if located therein:

- A. Convenience Markets/Stores;
- B. Drive-in Establishments;
- C. Nursery School/Large Family Day Care facility; ~~except on Monterey Rd.~~
- D. Commercial Indoor Recreation *uses greater than 3,000. sq. ft.*. (Ord. No. 1692 N.S. § 3, 2004; Ord. 1495 N.S. § 14, 2001)
- E. *Nightclubs, theaters, and bars*
- F. *Schools, General Educational*
- G. *Any other use which the Planning Commission finds to be of a similar nature to the permitted uses and conditional uses specified in this chapter for the CC-R zoning district.*

18.24.080 Residential Development restrictions within the CC-R district:

Single-family attached, duplex and multi-family dwellings in the CC-R district are subject to the following restrictions:

- A. Residential development control system approval is required for all residential development in accordance with Chapter 18.78 of this title.
- B. Residential development is allowed at a density of one dwelling per two thousand four hundred square feet or greater.
- C. Only one detached dwelling per parcel.
- D. A Residential Planned Development zoning designation is required for development of more than one contiguous parcel proposed by the same individual or entity.
- E. ~~Residential units on parcels fronting Monterey Rd., are permitted only on second-story and above locations.~~ No new residential units shall be allowed in the area bounded by Second Street, Depot Street, Fourth Street and Monterey Road, except as part of mixed use projects. (Ord. No. 1692 N.S. § 3, 2004)

18.24.090 Accessory uses.

The following accessory uses are permitted in the CC-R district:

- A. All uses customarily appurtenant to a permitted residential use. (Ord. 1692 N.S. § 18, 2004; Ord. 559 § A (part), 1981)

18.24.100 Site development standards.

The following site development standards shall apply in the CC-R district:

- A. Minimum lot area, six thousand square feet;

B. Minimum lot width, fifty feet. Minimum lot width for two or more dwellings shall be sixty feet;

C. Minimum lot depth, one hundred feet;

D. Maximum building coverage, seventy-five percent;

E. Minimum setbacks, commercial and mixed use development:

1. Front, zero feet,

2. Rear, zero feet,

3. Side, zero feet;

Unless adjacent to a residential use, in which case the setback shall be a minimum of twenty-five feet or a distance deemed appropriate by the Architectural and Site Review Board after reviewing specific site planning and architectural considerations;

F. Minimum setbacks, residential:

1. Front, twenty-five feet,

2. Rear, twenty feet,

3. Side, five feet;

Unless part of a planned development, in which case setbacks may vary in accordance with the approved design layout;

G. Maximum height three stories; thirty-five feet; or 45 ft. with a minimum of 10 ft. devoted to a roof element on a three story structure.

H. Side street side yard for residential development. A side yard along the side street lot line of a corner lot shall have a width of not less than fifteen feet or one-half the required depth of the front yard, whichever is greater;

I. Cul-de-sac lot width, minimum of forty feet as measured along the front property line. (Ord. No. 1692 N.S. § 3, 2004)

18.24.110 Commercial uses--Performance standards.

In order to achieve residential compatibility with existing dwellings in the CC-R zoning district, the following standards shall apply to proposed commercial uses when they abut residential property:

A. A trip generation figure of not more than ten trips per one hundred square feet of floor area must be characteristic of the proposed use.

B. Landscaping, including vegetative screening of the use from adjacent residential structures, shall account for a minimum of ten percent of the lot area.

C.A. Noise levels emanating from the commercial enterprise may not exceed sixty dBA at the property perimeter. *Should a commercial use be active after 10:00 p.m., noise levels shall not exceed forty-five dBA, as measured at the property boundary.*

D. Commercial structures must be designed to include a transition in height and mass when constructed adjacent to an existing residential unit.

E. Hours of business operation must be compatible with a residential environment. *Should a commercial use be active during the evening hours, noise levels shall not exceed forty-five dBA, as measured at the property boundary.*

F.B. All proposed commercial use conversion, or commercial building expansion *or new commercial buildings* shall be subject to site and architectural plan approval by the Architectural and Site Review Board. Minimum front yard setback standards shall be increased by up to twenty-five feet if it is found necessary to maintain the residential

character of the neighborhood in which the use conversion or building expansion is proposed. *In reviewing a commercial building expansion or new commercial building, the Architectural Review Board may require one or more of the following:*

- 1. Minimum front yard setback standards may be increased by up to twenty-five feet if it is found necessary to maintain the residential character of the neighborhood;*
- 2. Landscaping, including vegetative screening from the adjacent residential structures; and/or*
- 3. Design which is compatible in both scale and character to the current residential nature of the area.*

(Ord. 1692 N.S. § 18, 2004; Ord 1111 § 15, 1992; Ord. 559 N.S. § A (part), 1981)

18.24.120 Other required conditions.

A. Architectural and site plan approval by the Architectural and Site Review Board shall be required for construction of any residential dwelling which would result in the establishment of two or more dwellings on any parcel with a street frontage less than sixty feet or an area less than six thousand square feet.

B. All new residential construction shall conform with provisions of the housing replacement program as set out in Chapter 15.30 of this title. (Ord. 1692 N.S. § 18, 2004; Ord. 1111 N.S. § 16, 1992; Ord. 1055 N.S. § C (part), 1991; Ord. 899 N.S. §29, 1989; Ord. 783 N.S. § 3 (part), 1986)

PROPOSED ORDINANCE WITHOUT STRIKEOUTS AND ITALICS

Chapter 18.24

CC-R CENTRAL COMMERCIAL/RESIDENTIAL DISTRICT

Sections:

- 18.24.010 Purpose of district.
- 18.24.020 Downtown Ground Floor (GF) Overlay District.
- 18.24.060 Permitted uses
- 18.24.070 Conditional uses
- 18.24.080 Residential Development restrictions within the CC-R district.
- 18.24.090 Accessory uses.
- 18.24.100 Site development standards.
- 18.24.110 Commercial uses--Performance standards.
- 18.24.120 Other required conditions.

18.24.010 Purpose of district.

The purposes of this CC-R central commercial/residential mixed-use district are to:

- A. Implement the goals and objectives of the Downtown Design Plan as recommended by the City Council in 2003 and as amended from time to time.
- B. Preserve older architectural styles in the city;
- C. Provide for a variety and intermixture of residential and commercial activities in the downtown area; and
- D. Conserve housing stock. (Ord. 1692 N.S. § 18, 2004; Ord. 559 N.S. § A (part), 1981)

18.24.020 Downtown Ground Floor (GF) Overlay District.

The ground floor combining district of Chapter 18.23 shall apply to the area of the CC-R district designated "GF" Overlay District as shown on the Zoning Map. Where the Downtown Ground Floor Overlay District is combined with the CC-R District, the uses established the GF Overlay District shall apply in lieu of the uses normally allowed in the CC-R District. Except for the regulations relating to uses set forth in the GF Overlay District, all other regulations shall be those of the applicable underlying CC-R District.

18.24.060 Permitted uses

The following uses shall be permitted in the CC-R district:

- A. Single-family attached, detached, duplex and multifamily dwellings (see development restriction in section 18.24.080);
- B. Retail (excepting locations on First, Second, Third and Fourth Street(s) west of the parcels fronting the west side Monterey Rd.);
- C. Restaurants;
- D. Personal Services;

- E. Medical Offices;
- F. Professional Offices;
- G. Financial Services;
- H. Small Family Day Care.
- I. Commercial recreation uses 3,000 sq. ft. or less;
- J. Business Support Services;
- K. Office, Administrative;
- L. Arts and Crafts Gallery;
- M. Food Service, Takeout;
- N. Specialty Food Market;
- O. Nightclubs, Theaters and Bars ancillary to a restaurant located within the GF Overlay District whose ground floor tenant space extends beyond 75 feet from Monterey Road or Third Street;
- P. Antique Shops, Vintage Clothing and Collectibles;
- Q. Commercial Service;
- R. Business, Trade or Tutoring Schools
- S. Theaters located within the GF Overlay District whose ground floor tenant space extends beyond 75 feet from Monterey or Third Street.

18.24.070 Conditional uses.

The following uses may be conditionally allowed, subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan, if located therein:

- A. Convenience Markets/Stores;
- B. Drive-in Establishments;
- C. Nursery School/Large Family Day Care facility;
- D. Commercial Indoor Recreation uses greater than 3,000. sq. ft.
- E. Nightclubs, theaters, and bars;
- F. Schools, General Educational;
- G. Any other use which the Planning Commission finds to be of a similar nature to the permitted uses and conditional uses specified in this chapter for the CC-R zoning district.

18.24.080 Residential Development restrictions within the CC-R district:

Single-family attached, duplex and multi-family dwellings in the CC-R district are subject to the following restrictions:

- A. Residential development control system approval is required for all residential development in accordance with Chapter 18.78 of this title.
- B. Residential development is allowed at a density of one dwelling per two thousand four hundred square feet or greater.
- C. Only one detached dwelling per parcel.
- D. A Residential Planned Development zoning designation is required for development of more than one contiguous parcel proposed by the same individual or entity.

E. No new residential units shall be allowed in the area bounded by Second Street, Depot Street, Fourth Street and Monterey Road, except as part of mixed use projects. (Ord. No. 1692 N.S. § 3, 2004)

18.24.090 Accessory uses.

The following accessory uses are permitted in the CC-R district:

A. All uses customarily appurtenant to a permitted residential use. (Ord. 1692 N.S. § 18, 2004; Ord. 559 § A (part), 1981)

18.24.100 Site development standards.

The following site development standards shall apply in the CC-R district:

- A. Minimum lot area, six thousand square feet;
- B. Minimum lot width, fifty feet. Minimum lot width for two or more dwellings shall be sixty feet;
- C. Minimum lot depth, one hundred feet;
- D. Maximum building coverage, seventy-five percent;
- E. Minimum setbacks, commercial and mixed use development:
 - 1. Front, zero feet,
 - 2. Rear, zero feet,
 - 3. Side, zero feet;

Unless adjacent to a residential use, in which case the setback shall be a minimum of twenty-five feet or a distance deemed appropriate by the Architectural and Site Review Board after reviewing specific site planning and architectural considerations;

- F. Minimum setbacks, residential:
 - 1. Front, twenty-five feet,
 - 2. Rear, twenty feet,
 - 3. Side, five feet;

Unless part of a planned development, in which case setbacks may vary in accordance with the approved design layout;

- G. Maximum height three stories; thirty-five feet; or 45 ft. with a minimum of 10 ft. devoted to a roof element on a three story structure.
- H. Side street side yard for residential development. A side yard along the side street lot line of a corner lot shall have a width of not less than fifteen feet or one-half the required depth of the front yard, whichever is greater;
- I. Cul-de-sac lot width, minimum of forty feet as measured along the front property line. (Ord. No. 1692 N.S. § 3, 2004)

18.24.110 Commercial uses--Performance standards.

In order to achieve residential compatibility with existing dwellings in the CC-R zoning district, the following standards shall apply to proposed commercial uses when they abut residential property:

In order to achieve residential compatibility with existing dwellings in the CC-R

zoning district, the following standards shall apply to proposed commercial uses when they abut residential property:

A. Noise levels emanating from the commercial enterprise may not exceed sixty dBA at the property perimeter. Should a commercial use be active after 10:00 p.m., noise levels shall not exceed forty-five dBA, as measured at the property boundary.

B. All proposed commercial building expansion or new commercial buildings shall be subject to site and architectural plan approval by the Architectural and Site Review Board. In reviewing a commercial building expansion or new commercial building, the Architectural Review Board may require one or more of the following:

- a. Minimum front yard setback standards may be increased by up to twenty-five feet if it is found necessary to maintain the residential character of the neighborhood;
- b. Landscaping, including vegetative screening from the adjacent residential structures; and/or
- c. Design which is compatible in both scale and character to the current residential nature of the area.

(Ord. 1692 N.S. § 18, 2004; Ord 1111 § 15, 1992; Ord. 559 N.S. § A (part), 1981)

18.24.120 Other required conditions.

A. Architectural and site plan approval by the Architectural and Site Review Board shall be required for construction of any residential dwelling which would result in the establishment of two or more dwellings on any parcel with a street frontage less than sixty feet or an area less than six thousand square feet.

B. All new residential construction shall conform with provisions of the housing replacement program as set out in Chapter 15.30 of this title. (Ord. 1692 N.S. § 18, 2004; Ord. 1111 N.S. § 16, 1992; Ord. 1055 N.S. § C (part), 1991; Ord. 899 N.S. §29, 1989; Ord. 783 N.S. § 3 (part), 1986)

EXHIBIT "D"

Article IV. Downtown Administrative Use Permits

- 18.54.240 Purpose of permits.
- 18.54.250 Application—Contents.
- 18.54.260 Application Process.
- 18.54.270 Evaluation, Conditions and Findings.
- 18.54.280 *Expiration--Extensions.***

18.54.240 Purpose of permits. The purpose of Downtown Administrative Use Permits is to allow for Commercial, Professional and Medical Office uses, and Personal Services uses, to locate in first floor locations on parcels that located in the Ground Floor Overlay District fronting Monterey Road or Third Street, upon a determination that ~~a building is not appropriately designed and/or located, and/or the retail market is not sufficiently strong, to accommodate a retail use, and therefore that ground floor office or personal service uses may be allowed.~~ ***Additionally, ground floor personal service uses may be allowed within a tenant space if the use is ancillary to a retail use occupying the same space and will provide a continuity of display window visual interest that includes the retail component.***

18.54.250 Application—Contents. An application for a Downtown Administrative Use Permit (DAUP) shall be made by the property owner or agent thereof, on a form issued by the Community Development Department. An application shall be accompanied by the following information except as may be waived by the Community Development Director for proposed uses in existing structures:

- A. Vicinity map;
- B. Site plan;
- C. Floor plan;
- D. Building elevations for facades along Monterey Avenue and Third Street;
- E. Signing and landscape plan;
- F. Statement of proposed operations, including but not limited to number of employees, and proposed hours of operation, ***and, if applicable, how the personal service use relates to the retail use within the tenant space.***
- G. ~~Either one or both of the following:~~
 - ~~i. A statement that the building is not designed and/or located appropriately to accommodate retail use(s); or~~
 - ~~ii. Materials which demonstrate that the subject space in the building has been advertised for lease to retail tenants for at least 90 days, but the owner has been unable to locate a suitable retail tenant at market rates.~~
- H. Other materials as required by the Community Development Department.

18.54.260 Application Process.

- A. An application for a Downtown Administrative Use Permit shall be filed with the Community Development Department, in a form prescribed by the

Community Development Director. After an application is deemed complete by the Community Development Department, such application shall be routed to affected City departments for comments.

- B. The Department shall notify by mail the applicant and owners of property located within 300 feet of the proposed site of the proposed use and application for a Downtown Administrative Use Permit, at least ten days prior to the scheduled date for decision by the Department, in order to receive comments. The Department should also notify the Chamber of Commerce, ***Downtown Association*** and other organizations with a known interest in Downtown Morgan Hill.
- C. After the notice period has occurred and comments have been considered, the Community Development Director will take action on the DAUP. Appeals of the decision of the Community Development Department shall be filed within 10 days, and appeals shall be considered by the Planning Commission at a noticed public hearing. Appeals of the decision of the Planning Commission shall be filed within 10 days, and appeals shall be considered by the City Council at a noticed public hearing. The decision of the City Council shall be final.

18.54.270 Evaluation, Conditions and Findings.

Evaluation. The Community Development Director or designee shall evaluate the application for consistency with the following criteria:

1. The suitability of the site and building for the proposed use;
2. The impact of the use on the surrounding properties, and on the CC-R District in general.
3. The impact of the use on traffic circulation and planned capacity of the street system.
4. The compatibility of the use and design with adjacent uses within the district and its surroundings;
5. Whether the use will adversely affect the peace, health, safety, morals or welfare of persons residing or working in the vicinity of the use;
6. Whether the use will impair the utility or value of property of other persons located in the vicinity of the site;
7. The applicability and conformity of the use with provisions of Chapter 8.40, hazardous materials, as existing or hereafter amended;
8. Review of the building with regard to suitability of design and location for accommodation of first floor retail use(s);
9. Review of materials submitted by the applicant and determination that the subject space in the building has been advertised for lease to retail tenants for at least 90 days, but the owner has been unable to locate a suitable retail tenant at market rates;
10. Whether the use will provide a public benefit to the City and its citizens.
11. ***Vacancy rate for commercial buildings in the Downtown core.***

12. *Whether the use is clearly ancillary to a retail use within the tenant space and will provide a continuity of display window visual that includes the retail component.*

Conditions. The Community Development Director may impose reasonable conditions on an approval of a Downtown Administrative Use Permit. Conditions may include, but shall not be limited to, conditions requiring a review of the use at some future time or upon certain triggering event(s); conditions providing for expiration of the Administrative Use Permit at some future time or upon certain triggering event(s); conditions imposing requirements for site maintenance and/or improvements; *conditions requiring a personal service to be ancillary to a retail use within the same tenant space and maintenance of display window visual interest that includes the retail component*; conditions requiring installation and maintenance of landscaping, regulation of vehicular ingress and egress, traffic circulation, regulation of signs, establishment of development schedules or time limits for performance or completion, and/or any other conditions as deemed necessary by the Community Development Director.

Findings. Approval of and issuance of the Downtown Administrative Use Permit shall be subject to the Community Development Director making one or more of the following findings:

1. ~~The building is not designed and/or located appropriately to accommodate retail use(s); and/or~~

2.1. The subject space in the building has been advertised for lease to retail tenants for at least 90 days, but the owner has been unable to locate a suitable retail tenant at market rates; *or*

2. *The vacancy rate for commercial space exceeds five (5) percent in the Ground Floor Combining District (The Downtown Association or other entity as determined by the City shall conduct a vacancy rate survey in April and October of each year); or,*

3. *If the use is personal service, the applicant has demonstrated that the use is ancillary to a retail use within the tenant space and provides a continuity of display window visual interest.*

18.54.280 Expiration--Extensions.

A. *Approval of a Downtown Administrative Use Permit shall be valid for three (3) years from the date of approval.*

B. *The approval may be extended one or more times by the Community Development Director for up to up to three (3) years for each extension, upon the applicant requesting in writing such extension and paying the established fee. An application for an extension may be submitted no sooner than nine months from the expiration date of the previously approved Downtown Administrative Use Permit. The application process, including public noticing and appeals, shall occur in accordance with Section 18.54.260. Approval of a Downtown Administrative Use Permit extension shall be subject to the Community Development Director making*

the required findings in Section 18.54.270. The Community Development Director may impose reasonable conditions on an approval of a Downtown Administrative Use Permit as outlined in Section 18.54.270. Conditions imposed on an extension may be different from the conditions imposed on the originally approved Downtown Administrative Use Permit.